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Licensing of Local Exchange Carriers' Subscriber List Information Is Essential For Competitive Directory Assistance

POSITION STATEMENT
of
Excell Agent Services, Inc., Tempe, Arizona
Amended September 3, 1996

Executive Summary

Directory Assistance Is an Essential Part of Telecommunications Services

- Directory assistance historically has been part of telephone service, which, for many years, was provided to customers on an unrestricted basis and with no direct charge.

Charges for Directory Assistance Began as the Industry Shifted to Competition

- As competition grew in long distance, carriers sought to remove all costs unrelated to services, and, accordingly, they began charging for directory assistance calls.
- Competing carriers recognize that providing their own directory assistance services strengthens their ties with customers and enhances their company's name and image.
- As rates for local exchange service increased in the past decade, local exchange carriers (LECs), seeking to reduce costs of basic services, began charging for local directory assistance calls.

Competitive Provision of Directory Assistance Is Critical for Competition

- With newer technologies and procedures than those used by established LECs, competitive directory assistance will bring improved services at lower prices.
- Competitive LECs must be able to provide directory assistance equal in all aspects to directory assistance services afforded to customers of incumbent LECs.
- Competitive provision of directory assistance is possible only if independent companies are licensed to use the LECs' subscriber list information.

The FCC and State PUCs Should Immediately Order All Incumbent LECs to Provide Subscriber Lists to Competing Directory Assistance Providers

- The 1996 Act requires LECs to provide subscriber lists for directory assistance.
- The FCC has stated unequivocally that, "***A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.***"

Background

This position paper focuses exclusively on licensing and use of LECs' subscriber list information to Excell and other independent companies for publishing of directories and providing directory assistance for competing telecommunications and multimedia companies. The paper does not address related issues, e.g., assuring that customers of competitive LECs are listed in printed directories and receive copies of the directories.

Directory assistance services have always been closely linked with the publishing of directories, as is the case today. The database used by the LECs to publish directories is accessed by operators to provide directory assistance, which is correctly perceived by customers as the most timely and accurate update of the published directories (with the exception of directories published electronically). Printed directories typically are published once a year, while the database used for directory assistance is updated continually. For customers away from their homes and offices, directory assistance is frequently the only available source of directory information.

Directory Assistance Is an Essential, Competitive Element of Telephone Service

Historically, directory assistance has been an important part of telephone service, provided to telephone customers without direct charge for more than a century. When competition in long-distance services became intense after the AT&T divestiture of the Bell operating companies in 1984, competing carriers were under increasing market pressure to reduce their costs. The carriers were particularly anxious to remove extraneous burdens on their services, including "free" directory assistance.

In a competitive environment, there is little rationale for providing directory assistance with no direct charge. Internally subsidizing one service with revenues from another burdens some customers to benefit others, and those who are burdened will seek more economical alternatives to avoid the excess costs. Initial tariffs filed by the LECs to provide directory assistance for long distance, or interexchange, carriers ranged from approximately 25 cents per call to 98 cents per call. The FCC set the rate at 45 cents per call.

As rates for local service increased in the 1980s, LECs sought to reduce costs and, like their counterparts in long distance, obtained regulatory approval to charge for local directory assistance. Rates for local directory assistance vary by company and jurisdiction, but presently range from 25 cents to 50 cents per call. Most states allow a few local directory assistance calls without charge each month.

In a Competitive Marketplace, Directory Assistance Must Be Competitive

Competitive provision of directory assistance is critical in a competitive marketplace for several important reasons.

A first consideration is cost reduction. Long distance carriers have long recognized that they can reduce costs associated with providing directory assistance by handling calls themselves or contracting with competitive providers, who are independent of the local exchange carriers. Excell and other independent companies have won contracts to provide directory assistance services for competitive long distance companies and other telecommunications carriers.

A second issue relates to branding and company name recognition. To be successful in the very competitive telecommunications industry today, local and long distance carriers entering the marketplace must clearly differentiate their services from those of their competitors and must establish instant name recognition and brand loyalty among their customers. Competitive telecommunications providers realize that by providing their own directory assistance services they can strengthen their company's identity and image, and develop loyalty among their customers. Directory assistance provides invaluable direct contact with customers.

Acquainting customers with new product and service offerings is another important reason for competing local exchange and long distance companies to offer their own directory assistance services. New product lines, features, and service packages are fundamental to a competitive marketplace, affording customers an array of options at different price levels to meet their particular needs.

Fourthly, and very importantly, Excell and other independent directory assistance providers offer national and international directory assistance information, which is not the case with the established LECs. The number of long distance and international calls continues to increase, creating a rapidly growing market for national and international directory assistance services. Excell and other providers fill what would otherwise be a serious void in directory assistance for emerging competitors.

So long as established LECs are allowed to maintain exclusive control of telephone subscriber list information, they will retain unfair and insurmountable advantage over any new carriers seeking to compete in the local market. Even beyond that, unless the established LECs are required to license their subscriber list information in a nondiscriminatory and reasonable manner, they will have opportunities to create unfair and anticompetitive distortions in long distance and other markets, such as cellular and PCS, that utilize directory assistance services.

The opportunities for such anticompetitive behavior would remain even if the incumbent LECs agreed to list and serve customers of competing carriers on a fair-pricing basis. In such cases, the incumbent LECs retain exclusive control of the service and because of that exclusive control they are in a position to favor themselves and to disadvantage competing carriers. Competing carriers would be denied the opportunity to introduce cost-effective technologies; new services, such as message delivery to subscribers with non-published numbers; and procedures for handling directory assistance requests; as well as the opportunity to serve customers of other carriers and gain economies of scale.

All of these factors are critically important for carriers engaged in heated competition with larger, well-established, and well-known rivals. Carriers that provide their own directory assistance, directly or through an independent directory assistance company, clearly convey to customers that they are on a par with the established companies.

Subscriber List Information Is Essential for Providing Competitive Directory Assistance Services

The subscriber list information developed by each incumbent LEC for its serving area contains the names, addresses, and telephone numbers of all subscribers, and the primary advertising listing for business customers. The subscriber list information also includes the names of customers with unlisted telephone numbers – information that enables competitive directory assistance providers to safeguard the privacy of these persons by simply telling a caller that the telephone number is unlisted, as directory assistance operators have done traditionally.

Competitive directory assistance providers without access to subscriber list information are forced to rely on information obtained from commercial sources. Typically, such information is compiled from separate and conflicting sources, which are sometimes out of date and inaccurate, and which do not indicate customers with unlisted numbers. Such information does not provide a sufficient or satisfactory resource for provision of directory assistance services in competition with the established LECs, whose subscriber lists are continually updated and include subscribers with non-published numbers.

Access to the local exchange database is an unsatisfactory substitute for subscriber list information also. While the database does not have the same deficiencies as commercial lists, its limitations are severe. We note that the FCC's recent Order states, "We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 143.]

In fact, however, access to the LECs' databases is not in practice an effective way to gain nondiscriminatory access to directory assistance. Variations in database systems used by different LECs require competing directory assistance providers to invest millions of dollars to match each of these systems, and these expenditures make it impossible to offer competitive directory assistance .

Access to the directory information through the local exchange database requires independent directory assistance providers to match different technologies in different serving areas throughout the U.S., which poses a severe economic disadvantage. Also, LECs which offer access to the database often do so only under restrictive conditions and without the names of customers with non-published numbers. And, thirdly, in providing database access, the LECs also restrict the products and services that competitive local exchange carriers (CLECs) and other competitive providers can offer their customers. Access to the database is a totally unsatisfactory approach for providing directory assistance that is competitive with the directory assistance services offered by the LECs.

In its discussion of directory assistance and listings for purchase or resale to competitors, The FCC's recent Order emphasizes the Act's requirements that, "Under the general definition of 'nondiscriminatory access,' competing carriers must be able to obtain at least the same quality of access to these services that a LEC itself enjoys." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 142.]

The Act is explicit: "...a telecommunications carrier that provides telephone exchange service shall provide subscriber list information ...on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format". [47 U.S.C. 222 (e).]

Refusal of the RBOCs and Other LECs to License Subscriber List Information Limits Excell's Ability to Provide Competitive Directory Assistance Services

Increasing competition in long distance services and in local exchange services created a market for competitive provision of directory assistance, and Excell Agent Services was established to address that market. But without subscriber list information, Excell cannot complete its mission to provide "Best in Class" competitive directory assistance services.

Excell has negotiated with the RBOCs and other LECs for years in efforts to persuade these companies to license subscriber list information essential to the provision of competitive directory assistance, with very limited success. Several of the Bell companies have agreed to provide subscriber list information to some extent, but no company is in complete agreement. Bell Atlantic, NYNEX, Pacific Bell, and SBC are totally unresponsive, as are GTE and most of the other LECs contacted.

The RBOCs and other LECs that Excell has contacted refuse to make subscriber list information available on fair and reasonable terms, which limits Excell in providing competitive directory assistance services to interested carriers in the areas served by these LECs. Excell has petitioned all of the RBOCs and many other LECs to obtain and use subscriber list information for provision of directory assistance in all 50 states. Excell also provides directory assistance services to telecommunications carriers in other countries.

With the subscriber list information it has, Excell currently provides directory assistance services on a wholesale basis to telecommunications and multimedia companies, but the compiled lists now used in many areas are not as accurate as the LEC subscriber list information and these compiled lists are very limited with respect to information on subscribers with non-published numbers. With the availability of subscriber list information, Excell could offer its customers more accurate information and a full range of directory assistance services.

Making Subscriber List Information Available to Competitive Directory Assistance Providers Will Benefit Customers

First, if incumbent LECs are allowed to continue to retain exclusive control of subscriber list information, customers will be denied the full benefits of competition.

Long-established, monopoly directory assistance providers have little incentive to introduce new directory assistance features that customers might find useful, such as local travel and street information, Yellow Page searches, and local restaurant menus. In a competitive environment, on the other hand, all directory assistance providers would have every incentive to provide such distinctive services. If the LECs control the database, they will unquestionably use it to gain anticompetitive advantage.

If established LECs retain monopoly control over directory assistance and the subscriber list information, competitive local exchange carriers (CLECs) will also have difficulty establishing brand recognition with their customers. Consistent branding helps a local telephone customer to identify with a new local carrier, and such branding could easily be compromised if the established LEC controls directory assistance service. In a competitive marketplace, these and other enhancements are essential to the differentiation a CLEC must establish and maintain in order to attract and keep customers.

So long as the established LECs control subscriber list information, customers will be denied new products and services. If a CLEC changes its name, an established LEC will have no incentive to provide this information to customers promptly, as an independent directory assistance provider would. As another example, directory assistance operators have a number of phrases which are used in responding to inquiries. If a CLEC wants greater variety in the phrases, as another way of distinguishing itself from competitors and improving service, the incumbent LEC may simply decline such a request.

Importantly, monopoly provision of directory assistance also eliminates the opportunity for CLECs to introduce new technologies and greater efficiency to directory assistance and artificially keeps costs higher than they would be in a fully competitive marketplace.

Secondly, customers will be denied the benefits of competition if incumbent LECs retain control of subscriber list information while competitive directory assistance providers are permitted only database access.

In this situation, opportunities for competing directory assistance providers are limited because they have no control over the subscriber list information and cannot introduce new, more efficient technologies; they are left at the mercy of their chief competitors.

Many CLECs compete in multiple markets. With subscriber list information, a CLEC can operate more efficiently and take advantage of economies of scale by using a single directory assistance system for all of its serving areas. With database access, however, if a CLEC wishes to have its own directory assistance services throughout its serving areas, it will have to interconnect with different systems in use by the LECs. It will spend millions of dollars to match each of the systems and staff a separate group of operators for each, greatly increasing its costs and rendering its services less competitive.

Thirdly, the Act appropriately requires that subscriber list information be provided to competitive directory assistance companies, and, in a recent Order, the FCC has implemented those provisions.

With subscriber list information made available on nondiscriminatory and reasonable rates, terms, and conditions, all directory assistance providers can compete on even terms. Excell has a proven record of handling subscriber list information with responsibility for the integrity and security of the information and safeguarding customer proprietary network information and privacy, including non-published numbers. As is the case with the provision of local exchange services, mechanisms are in place to assure that all providers of directory assistance services will adhere to similar standards of responsibility and security in their handling of subscriber list information.
Promoting competition in directory assistance helps assure that customers will enjoy the full benefits of competitive price and service offerings and timely technology and product innovation.

The 1996 Act States That Subscriber List Information Must Be Made Available

The Telecommunications Act of 1996, signed into law on February 8, 1996, says that "...a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." [U.S.C. 222 (e)].

Subscriber list information is defined as any information "...identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format." [Sec. 222(f)(3)]

In a May, 1996, Notice of Proposed Rulemaking (NPRM) on Implementation of Local Competition Provisions of The Telecommunications Act of 1996, the FCC notes that Section 222 [which was added as a new section to the Communications Act of 1934] took effect upon enactment and will be further specified by the FCC. The NPRM states: "Although *the requirements of Section 222 were immediately effective* [emphasis added], we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under subsections 222 (c) - (f) of the 1996 Act would be in the public interest." [FCC 96 - 221, May 16, 1996, para. 2]

In a recent Order implementing the local competition provisions of the Act, the FCC adopts final rules on Part 51 of Title 47 of the U.S. Code of Federal Regulation, dealing with directory assistance and other issues. Under a section on directory assistance and directory listings, the rule states, "(ii) *Access to directory listings.* ***A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.*** " [Emphasis added] [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, Appendix B - Final Rules, Sec. 51.217 (c)(3).]

The order says, "Section 251 (b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers, must permit competing providers *nondiscriminatory* [sic] access to these services. Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 102.]

In the same order, the FCC addresses nondiscriminatory access to directory assistance information at length, and concludes that, "...the term 'nondiscriminatory access' means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC") must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that 'nondiscriminatory access,' as used in section 251 (b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 101.]

The Order further states, "Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers. In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are governed by section 252 (d)(1) and our rules thereunder. The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251 (b)(3) and the rules we adopt herein." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 115.]

State Actions

Some states, including California, Florida, New York, and Texas, have recognized the importance of subscriber listings to third parties for wholesale provision of directory assistance and directory publishing for new local-exchange and interexchange providers.

In a recent Order, the New York Public Service Commission instituted a process to investigate the sale of local exchange carrier directory database information and directory assistance services. [NYPSC Case 94-C-0095, Order Instituting Process to Investigate the Sale of Local Exchange Carrier Directory Database Information and Directory Assistance Services, July 19, 1996.] Among the subjects to be addressed in the process, which is scheduled to begin in September, 1996, are the following:

- Should alternative directory publishers have access to incumbent and entrant directory databases or database information and at what cost?

- If access is granted, how should equitable and fair provision of database information be accomplished?

- Since databases are continually being updated, what issues should be addressed to ensure availability of the most current listing information?

- What privacy safeguards are necessary regarding listing information?

- Should directory assistance databases be under the administration of incumbents, their regulated subsidiaries or independent third parties?

- What database security issues are involved and how can they be resolved?

- With regard to access to new entrant and incumbent directory assistance listing information, what compensation arrangements are necessary and how should they be structured?

- Who owns subscriber listing information?

- Should cellular and Personal Communications Services (PCS) directory listings be included in incumbent LEC directories and directory assistance databases as well?

- How should access to complete name, location and telephone number information for telephone customers be assured to 911 and emergency services?

Excell Agent Services

Obtaining subscriber list information is of utmost priority for Excell Agent Services, an Arizona company which was organized for the specific business purpose of providing voice directory assistance services on a wholesale basis to companies involved in the telecommunications and multimedia businesses. These companies include new companies competing for the provision of local exchange services and access to long distance; interexchange telecommunications providers; international telecommunications companies; cellular and other wireless service providers; cable companies providing telecommunications services; and electric utilities and municipalities providing telephone services. Excell's objective is to provide to all these companies wholesale directory assistance services that will be equal in all respects to the directory assistance services provided by the incumbent LECs and facilities-based interexchange carriers.

Without subscriber list information, Excell, and other companies engaged in providing directory assistance services on a wholesale basis, cannot provide their customers the same information they would receive from an incumbent LEC, and the information they do provide is more likely to be inaccurate and/or obsolete.